



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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DEC 03 2012

Uniform Issue List: 408.03-00

T: ZP:RA:TL

Legend:

Taxpayer A	=	***
Spouse	=	***
IRA X	=	***
Financial Institution A	=	***
Financial Advisor A	=	***
Amount A	=	***

Dear ***:

This is in response to your request signed May 21, 2011, as supplemented by correspondence dated August 31, 2011, September 10, 2011, October 25, 2011, and December 3, 2011, in which you request a letter ruling under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from IRA X of Amount A. Taxpayer A asserts that his failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Financial Institution A, in that Financial Advisor A, an employee of Financial Institution A, provided the incorrect rollover deadline date to Taxpayer A.

Taxpayer A represents that he is the owner of IRA X maintained at Financial Institution A. In February 2011, Taxpayer A contacted Financial Advisor A, his long-time financial advisor, seeking advice regarding options for accessing Amount A on a short-term basis for the purpose

of funding a cash purchase of a residence that was in foreclosure. Financial Advisor A told Taxpayer A that he could borrow the funds from IRA X, so long as the funds were redeposited back into the IRA by a certain deadline. The deadline provided by Financial Advisor A was after the required 60-day period. On March 25, 20 , Taxpayer A withdrew Amount A from IRA X, and his wife, Spouse, marked the calendar for the incorrect deadline provided by Financial Advisor A for the redeposit of Amount A in IRA X.

In May 20 , Spouse contacted Financial Advisor A to verify when Amount A needed to be redeposited into IRA X. Financial Advisor A confirmed the incorrect deadline he had previously provided Taxpayer A. Had Taxpayer A known the correct 60-day deadline he could have completed the rollover because he had the funds available during the 60-day period to redeposit Amount A in IRA X. On June 15, 20 , Taxpayer A sent a check for Amount A to Financial Advisor A and it was deposited into IRA X before the incorrect deadline but after the 60-day rollover period had ended. Financial Advisor A verified to Taxpayer A that Amount A was back in IRA X.

Taxpayer A did not discover that Financial Advisor A's advice was incorrect until he brought his 20 tax documents to his accountant and the accountant saw the Form 1099-R from Financial Institution A, showing a taxable distribution of Amount A. Taxpayer A has since removed Amount A from IRA X to avoid additional penalties.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to, IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received

any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6) (related to required distributions under section 401(a)(9) and incidental death benefit requirements of section 401(a)).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error committed by Financial Institution A, in that Financial Advisor A provided the incorrect rollover deadline date to Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code (regarding required distributions).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.